

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXCLUDE
DEFENDANTS' EXPERT REPORT REGARDING THE FEASIBILITY OF
PLAINTIFFS' HYPOTHETICAL ALUM REMEDIATION STRATEGY (Dkt. No. 2242)**

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

- - - - -
THE VIDEOTAPED DEPOSITION OF
DAVID CHAPMAN, produced as a witness on behalf of
the Defendants in the above styled and numbered
cause, taken on the 6th day of April, 2009, in the
City of Tulsa, County of Tulsa, State of Oklahoma,
before me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

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1 (Whereupon, the deposition began at
2 8:35 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of David Chapman. Today is April
5 6th, 2009. The time is 8:35 a.m. Counsel, please 08:35AM
6 identify yourselves for the Record?

7 MR. DEIHL: I'm Colin Deihl representing
8 Cargill.

9 MR. HIXON: Philip Hixon representing
10 Peterson Farms: 08:36AM

11 MS. XIDIS: Claire Xidis for the State of
12 Oklahoma.

13 MS. MOLL: Ingrid Moll for the State of
14 Oklahoma.

15 VIDEOGRAPHER: And on the phone, please? 08:36AM

16 MS. BRONSON: Vicki Bronson for Simmons
17 Foods.

18 VIDEOGRAPHER: Thank you. You may swear in
19 the witness.

20 DAVID CHAPMAN
21 having first been duly sworn to testify the truth,
22 the whole truth and nothing but the truth, testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. DEIHL: 08:36AM

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1 these choices.

2 Q What did you tell them about water clarity in
3 the survey?

4 A We told them that it would return to
5 conditions that were about 1960 and depending on 01:54PM
6 whether or not the program was put in place or not
7 in different time periods.

8 Q And upon what did you base that statement that
9 it would return the water to 1960 levels?

10 A From conversations with the natural scientists 01:54PM
11 and -- multiple conversations and discussions with
12 the natural scientists about what the sort of water
13 clarity should have looked like.

14 Q So if I wanted to know how the natural
15 scientists determined what the water clarity looked 01:55PM
16 like in 1960, I'd have to talk to them?

17 A Yeah.

18 Q Was there any data that you reviewed that
19 talked about the level of water clarity in 1960?

20 A Again, I'm not a natural scientist. I looked 01:55PM
21 at the various reports. I'd have to go back and
22 identify each of them to see what I did. To
23 identify sort of what types of information they were
24 developing, I looked at some of their modeling
25 results to sort of make sense of what they were 01:55PM

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1 saying and trying to understand what they were
2 saying. So I looked at those sorts of information.

3 Q How was the year 1960 chosen; do you know?

4 A It was a period at which provided reasonable
5 touchstone about the quality of the environment 01:56PM
6 before these changes, and it was developed I think
7 specifically through conversations between Dr.
8 Bishop and some of the natural scientists.

9 Q You said earlier that you didn't know what an
10 individual respondent thought about whether the 01:56PM
11 one-time alum program would result in clarity into
12 perpetuity; correct?

13 A Again, I'm not inside the head.

14 Q Understood.

15 A That's what makes this job challenging is 01:56PM
16 trying to identify information and so --

17 Q Didn't you ask them follow-up questions to ask
18 them what they considered?

19 A Uh-huh.

20 Q And you did that for each respondent; correct? 01:57PM

21 A Yes, we did.

22 Q And what did those follow-up questions
23 conclude about what they considered?

24 MS. XIDIS: Objection to form.

25 A To answer your question sufficiently, I'd have 01:57PM

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1 of the survey that a particular program would return
2 the water to water clarity levels of 1960 and that
3 would be enough?

4 MS. XIDIS: Objection to form.

5 A I don't believe that would be enough. 02:26PM

6 Q As long as they believed you?

7 MS. XIDIS: Objection to form.

8 A That they believed me?

9 Q Believed the surveyors.

10 A Believed the information presented in the 02:26PM
11 survey?

12 Q Yes.

13 A Given they believed the information in the
14 survey, they would be basing their answers in that
15 survey on that information. 02:26PM

16 Q Correct, and it wouldn't matter to the survey
17 results whether the information presented in the
18 survey was factually accurate or not?

19 MS. XIDIS: Objection to form.

20 A I didn't say that. There's lots of 02:26PM
21 information. Some of it is factual; some of it's
22 this sort of information. So I wouldn't say that.

23 Q What was the basis for the information in the
24 survey about effects on fish and other biota?

25 A Again, we often talked to the natural 02:27PM

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1 scientists, and Dr. Bishop was the lead communicator
2 with the natural scientists, but we often talked
3 with the natural scientists about effects of -- that
4 were going on in the river and lake and how we were
5 presenting it and making sure we were accurately
6 representing what they understood to be the
7 situation, and so the natural scientists were the
8 basis of that information.

02:27PM

9 Q Did you have any scientific support for that
10 information other than your conversations with the
11 natural scientists on the plaintiff's team?

02:27PM

12 A I personally did not. You would have to check
13 with others in the team.

14 Q We talked earlier about the statement in the
15 survey that 60 percent of the phosphorus loading
16 came from poultry litter and 40 percent came from
17 other sources, and you said that you had told the
18 respondents that the other 40 percent was being
19 treated. Did I hear you correctly?

02:28PM

20 A I don't know if I used the word treated.

02:28PM

21 Q I don't think you did use the word, but what
22 word would you use?

23 A I could tell you because we said it, so let me
24 tell you.

25 Q Was the word addressed?

02:28PM

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1 this text as it sits in this version right here.

2 Again, it's -- it was a team effort. Multiple
3 people talked and worked on the whole survey
4 multiple times.

5 Q Were you involved in writing the verbiage you 02:30PM
6 just read to me?

7 A Yes, I was.

8 Q When the language, the State is doing
9 additional things to reduce phosphorus in the
10 Illinois River was written, did you talk to anyone 02:31PM
11 about whether or not that statement is accurate?

12 A I'm sorry, where are you reading?

13 Q It's on Page A-14 after it says flip card to
14 next page, the following sentence.

15 A Okay. The State is doing additional things. 02:31PM
16 I'm sorry, your question again?

17 Q Did you talk to anyone about whether or not
18 that statement is accurate?

19 A Yes.

20 Q Who did you talk to? 02:32PM

21 A Talked to the natural scientists and talked to
22 the attorneys in the case, the State.

23 Q So you base that statement on your discussions
24 with the natural scientists and the attorneys in the
25 case? 02:32PM

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1 A Yes.

2 Q The same would be true about the previous
3 paragraphs that you read to me; did you base that on
4 your conversations with the natural scientists and
5 the attorneys in the case?

02:32PM

6 A No, I didn't say that.

7 Q Okay. What did you base those other two
8 paragraphs on, the ones you read aloud?

9 A I said I told you those were parts of the
10 scenario we developed to make people understand that
11 the problem could be fixed.

02:32PM

12 Q And why did you feel it was important to tell
13 people that the State of Oklahoma was taking action
14 to reduce the amount of new phosphorus that goes
15 into these rivers and lakes from these other
16 sources?

02:33PM

17 A Because, again, we only wanted our respondents
18 to provide us their willingness to pay or provide us
19 their answers to a question that dealt with that
20 period between -- that addressed -- was addressed by
21 that period in our scenario, and this removes part
22 of that period from our scenario.

02:33PM

23 Q Based on this statement, the respondents
24 believed that the State of Oklahoma was taking
25 action to reduce the amount of new phosphorus that

02:33PM

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1 MS. XIDIS: Objection to form.

2 A I'm not sure what we led them to believe. We
3 provided information to them.

4 Q You told them that it would return water
5 clarity to 1960 levels; correct? 03:08PM

6 A The survey provided the information that it
7 would return water clarity to about 1960 conditions.

8 Q And why did you pick 1960 conditions?

9 A As I said before, we talked to the natural
10 scientists about what seemed to be a good reference 03:08PM
11 point in water clarity, and that was the date that
12 was determined as being reasonable and, again, Dr.
13 Bishop specifically talked to the natural scientists
14 about these dates.

15 Q Why didn't you use a 1980 baseline to be 03:09PM
16 consistent with CERCLA?

17 MS. XIDIS: Objection to form.

18 A I don't understand the question.

19 Q Well, you implemented this CV study especially
20 for this litigation; right? 03:09PM

21 A Yes.

22 Q And CERCLA was enacted after 1960; correct?

23 A Yes.

24 Q The natural resource damages provision of
25 CERCLA. So why didn't you use the 1980 date as the 03:09PM

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1 baseline date instead of the 1960 date?

2 A 1980 has nothing to do with the date of
3 baseline.

4 Q What does 1960 have to do with it?

5 A It's the relative conditions that the 03:09PM
6 environment would be in but for the changes.

7 Q Why didn't you go to 1950?

8 A Because, again, in talking with the natural
9 scientists, the date that seemed about right to
10 present was 1960. Now, 1960, remember, is just an 03:10PM

11 indication of what the environment should have
12 looked like but for the release, but for the change
13 in the environment, change in the quality of the
14 environment. So we're just telling people -- giving
15 them a reference point that things in the past used 03:10PM
16 to look better. If we do something, we can get the
17 environment back to those conditions where they used
18 to look better.

19 Q Do you know what the difference in water
20 clarity was between 1960 and 1980? 03:10PM

21 A I'm not a natural scientist. I haven't looked
22 at the data. I can't tell you.

23 Q Did the natural scientists look at that?

24 A You'd have to ask them.

25 Q Okay. So, again, you picked 1960 based on the 03:10PM

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1 recommendation of the natural scientists?

2 A We picked 1960 as a date in the past when
3 things used to look better, that we could present to
4 people that things used to look better, and if we do
5 something, we can get the environment to look better
6 and it would look better like in the past, like in
7 about 1960.

03:11PM

8 Q Could you have picked 1962?

9 A Yes.

10 Q Would it have made any difference to the
11 results?

03:11PM

12 A I don't believe so.

13 MS. XIDIS: Objection to form.

14 Q 1965?

15 MS. XIDIS: Objection to form.

03:11PM

16 A I can't tell you because we didn't test that.

17 Q Okay. So 1960 was an arbitrary date that you
18 picked sometime in the past?

19 MS. XIDIS: Objection to form.

20 A Again, it's not arbitrary. We talked to the
21 natural scientists about what we were looking for.

03:11PM

22 Q And what did you tell the natural scientists
23 you were looking for?

24 A Again, Dr. Bishop had most of these
25 communications, but in some of the communications I

03:12PM

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1 had with them, what we told them was we were trying
2 to understand what the environment would have looked
3 like without all these additional nutrients, and
4 when in time -- because it's helpful for people to
5 understand these things, when in time is a
6 reasonable time to have told people it sort of looks
7 like that, and 1960 is what they provided us.

03:12PM

8 Q Who did you say had those conversations with
9 the natural scientists?

10 A I had some; Dr. Bishop had some. Dr. Bishop
11 is really the key communicator with all of the
12 natural scientists on our team.

03:12PM

13 Q Okay. Which natural scientists did you and
14 Dr. Bishop talk to?

15 A I can't specifically tell you all the natural
16 scientists that Dr. Bishop talked to.

03:13PM

17 Q Who did you talk to?

18 A I talked to Dr. Cooke, Dr. Welch, Dr.
19 Stevenson. One time I talked to Dr. Wells. Those
20 are the people I remember talking to. I may have
21 talked to others, I think Dr. Fisher, and then also
22 just to note, you know, this was a common discussion
23 and topic in our focus groups about people that had
24 been here for a long, long time. We had a number of
25 people who had been in the region for a long, long

03:13PM

03:13PM

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1 time, and we talked to them about what it looked
2 like in the past.

3 MR. DEIHL: Why don't we take a break for
4 the tape change.

5 VIDEOGRAPHER: We are now off the Record. 03:14PM
6 The time is 3:13 p.m.

7 (Following a short recess at 3:13 p.m.,
8 proceedings continued on the Record at 3:25 p.m.)

9 VIDEOGRAPHER: We are back on the Record.
10 The time is 3:25 p.m. 03:25PM

11 Q Mr. Chapman, how did you select the scope
12 version for this study?

13 A When you say we, how did I, you mean the team?

14 Q Yes.

15 A We identified a scenario that we felt 03:25PM
16 adequately described different size good to
17 respondents and tested that out.

18 Q Anything else?

19 A Those were the main things, tested it, and as
20 with everything, revised it, updated it as we went 03:26PM
21 through the process.

22 Q Is there any science to the selection of the
23 proper scope?

24 MS. XIDIS: Objection to form.

25 A The scope comes from, again, one of the 03:26PM

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1 there, so we presented a range and showed a
2 sensitivity analysis with the effect of our
3 decisions on that range.

4 Q Didn't you also assume that the relationship
5 between phosphorus loading from the application of
6 poultry in 1981 and water quality were the same as
7 they are today?

04:15PM

8 MS. XIDIS: Objection to form.

9 A Could you repeat? I'm sorry.

10 Q Didn't you also implicitly assume that the
11 relationship between phosphorus loadings from the
12 application of poultry litter in 1981 were the same
13 as they are today?

04:16PM

14 A No.

15 Q Why not?

04:16PM

16 A We assumed that the injuries -- we didn't
17 assume. We evaluated whether or not the overall
18 injuries during that time period would have been
19 similar.

20 Q How did you do that?

04:16PM

21 A As we described in the report, we talked to
22 the natural scientists. We had them work with us to
23 develop whether or not the average injury levels as
24 we described during those different time periods
25 were similar or not, and as we presented here, on

04:16PM

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1 average over those two different time periods, they
2 were very similar.

3 Q So the -- did you do anything to verify that
4 the baseline water quality was the same in 1981 as
5 it is currently? 04:17PM

6 A The baseline water quality is the quality of
7 the environment that would have existed without the
8 releases, and that would be similar to now.

9 Q And what did you base that on?

10 A That the overall level of the environment 04:17PM
11 without those releases would be similar, talking to
12 the natural scientists.

13 Q Okay. So you based it on conversations with
14 the natural scientists?

15 A Yeah. 04:17PM

16 Q Okay. Did you do anything to verify that the
17 poultry industry hasn't changed since 1981?

18 MS. XIDIS: Objection to form.

19 A I'm -- specifically for this, whether the
20 poultry industry changed over that time period, I've 04:18PM
21 seen graphs that have shown -- we discussed how
22 things have changed in our main survey. So we had a
23 fair amount of information that showed how the
24 poultry industry has changed over that time.

25 Q And did you take that into account in this 04:18PM

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1 benefits transfer?

2 A This transfer is about the total amount of
3 changes in the environment from all sources.

4 Q So did you take into account the fact that the
5 poultry industry has changed since 1981 in your 04:18PM
6 benefits transfer?

7 A To the degree that it's fed into the changes
8 in the environment we talked to the natural
9 scientists about, then, yes.

10 Q Okay, but you assumed that the injuries were 04:19PM
11 the same; correct?

12 A We present the discussion that we talked about
13 here that from talking to the natural scientists,
14 the injuries on average were about the same. Some
15 years they could have been higher, some years they 04:19PM
16 could have been lower as we described here, but on
17 average they're about the same.

18 Q And that's based on these conversations with
19 the natural scientists?

20 A Yes. 04:19PM

21 Q What can you tell me about the accuracy of
22 benefits transfers like this study; are they as
23 accurate as the original studies?

24 MS. XIDIS: Objection to form.

25 A The accuracy of a benefits transfer study 04:19PM

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